

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BANK OF AMERICA, N.A., FOR THE
BENEFIT OF HSBC BANK USA,
NATIONAL ASSOCIATION, AS
TRUSTEE FOR THE HOLDERS OF THE
DEUTSCHE ALT-A SECURITIES
MORTGAGE LOAN TRUST, SERIES
2007-1 MORTGAGE PASS-THROUGH
CERTIFICATES,

Plaintiff,

v.

ANDRES M. AMIL, II, DIANE D. AMIL.,

Defendants.

No. C 12-05522 RS

**ORDER ADOPTING REPORT AND
RECOMMENDATION TO REMAND
ACTION**

This matter was filed as an unlawful detainer in Contra Costa Superior Court. Appearing *in pro se*, defendant Andres Amil filed a notice of removal, asserting a right to do so on the basis of both diversity of citizenship and purported federal questions. Upon removal, the action was randomly assigned to a magistrate judge. The magistrate judge issued a Report and Recommendation that the matter be remanded to state court for lack of a jurisdictional basis to support the removal. The matter was then reassigned to the undersigned for disposition.

1 The time for objecting to the Report and Recommendation has expired and no objections
2 have been filed. For the reasons explained in the Report and Recommendation, removal jurisdiction
3 based on federal question is absent. As further explained in the Report and Recommendation,
4 courts have held that the “amount in controversy” in unlawful detainer actions is only the damages
5 incident to the alleged wrongful possession, and under that analysis, the \$75,000 minimum
6 threshold is not satisfied here. *See Litton Loan Servicing, L.P. v. Villegas*, No. C 10-05478 PJH,
7 2011 WL 204322, at*2 (N.D. Cal. Jan. 21, 2011) (quoting *Evans v. Superior Ct.*, 67 Cal. App. 3d
8 162, 170 (1977)).

9 Moreover, even assuming the value of the real property should be considered in determining
10 the amount in controversy, defendants are citizens of California and therefore are not entitled to
11 removal on diversity grounds. *See* 28 U.S.C. § 1441(b)(2). (A civil action “removable solely on the
12 basis of the jurisdiction under section 1332(a) . . . may not be removed if any of the parties in
13 interest properly joined and served as defendants is a citizen of the State in which such
14 action is brought.”) Accordingly, this action is hereby remanded to Contra Costa Superior Court.

15
16 IT IS SO ORDERED.

17
18 Dated: 3/25/13

19
20
21
22
23
24
25
26
27
28


RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:

Andres M. Amil, II

103 Ellison Lane

Richmond, CA 94801

DATED: 3/25/13

/s/ Chambers Staff

Chambers of Judge Richard Seeborg